IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1245 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAMESH CHHABANRAO KANDE - Appellant(s)
Versus
LAKHMANSING BHERAVSING RATHOD & 2 - Defendant(s)

==========

Appearance :
MR TM BAROT for MR DF AMIN for Appellant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,
MR SUNIL B PARIKH for Defendant(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 22/12/2006

ORAL JUDGMENT

1. This appeal is filed by the original claimant to challenge the award made by MACT No. 1 [Main], Ahmedabad dated 13th March, 1991 in MACP No. 88 of 1989 to the

extent it attributes the liability of the claimant to 30% for the accident that occurred on 9th February, 1989 at about 8:30 p.m., near Jain Wadi, Ahmedabad. The Tribunal on the basis of the material produced before it assessed the amount of compensation that could be awarded to the appellant at Rs.17,000=00. However, on account of the finding with regard to 30% negligence on the part of the claimant, the Tribunal deducted the amount of Rs.5,100=00 and granted compensation of Rs.11,900=00 only. Being dissatisfied with the same, the appellant has now approached this Court.

2. On going through the judgment of the Tribunal and also record and proceedings of the case and upon hearing Mr. Barot learned advocate for Mr. D. F. Amin for the appellant and Mr. Sunil Parikh learned advocate for the respondent insurance company, it appears that the finding with regard to contributory negligence given by the Tribunal and determining negligence of the appellant at 30% is clearly erroneous. The evidence shows that the appellant was working with lorry vendor and at the time of accident he was standing on the side of the road. It was the offending vehicle which caused him injuries by dashing it against him. It is difficult to find any fault on the part of the appellant so as to hold him 30% guilty

of contributory negligence. Hence, the said finding is required to be quashed and set aside and it is hereby quashed and set aside. I have also perused the discussion on the assessment of the quantum of compensation and in my opinion, it appears to be just and proper. The appellant has also not seriously challenged. In view of the same, the insurance company shall deposit the balance amount of the award i.e. Rs.5,100=00 together with proportionate costs and interest at the rate of 9% from the date of the petition till realization within a period of two months from the date of the receipt of this order. Upon depositing the amout, the Tribunal will disbursed the same.

3. In the result the appeal is partly allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

/phalguni/